IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13686 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
AMIT AMBALAL SHAH & 1 - Respondent(s)

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Appearance :
MR LR PUJARI, AGP for Petitioner(s) : 1,
MR SAMIR BUNDELA for MR HARIN P RAVAL for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/02/2007

ORAL JUDGMENT

1. The State is aggrieved by the order dated 26.7.88 passed in revision application no. Ten.B.A.807/87 by the Gujarat Revenue Tribunal,

where under the Tribunal had allowed the revision and granted permission in favour of the present respondent no.2 to transfer the land in accordance with the provisions of Rule-25C[f] of the Bombay Tenancy & Agricultural Lands Rules, 1956.

2. The facts necessary for disposal of the present writ application are that the respondent no. 2 made an application to the Deputy Collector, Viramgam, seeking permission to sell his land of block no. 113 admeasuring Hectare 0-82-96 sq.mts. of village Lilapur, Taluka-Daskroi. The Deputy Collector, after inquiry, granted the application vide his order dated 21.1.82. The State feeling aggrieved by the said order took up the matter in revision before the Tribunal. The Tribunal, by its order dated 4.11.86 passed in revision Ten.B.A. No.816/84 remanded the matter to the Deputy Collector for a fresh inquiry with liberty in favour of the original owner to submit the amended application for sale of the land. In accordance with the directions of the Tribunal, the Deputy Collector started

further proceedings and by his order dated 17.10.87 rejected the application. Being aggrieved by the said order, the respondent no.2 took up the matter to the Revenue Tribunal and the Revenue Tribunal allowed the revision application, being aggrieved by the said grant of permission, the almighty State has come to this Court. Shri L.R. Pujari,learned AGP for the State submits that that on an earlier occasion, the respondent no.2 sought permission to transfer/sell the land on the ground that he was to pay certain debts and was in need of money, but at the later point of time, he made an application saying that he needed money to develop his other lands, submission of Shri Pujari is that if the respondent no.2 was changing his stand and stance, the Deputy Collector was justified in rejecting the application and in case of discretion in not granting permission, the Tribunal could not have interfered. Learned counsel for the respondent, however, submits that during pendency of the application, if land holder/land owner decides

to make yet another application on a ground which is legally available to him, then filing of additional application would not show mala fides on the part of the land owner. His submission is that if the law permits the land owner to transfer the land in the event of some eventuality, then, such application should be taken in its true perspective and only after considering the prospects and consequences, the Collector should decide the application.

3. The Deputy Collector on an earlier occasion had granted an application holding that the petitioner could be allowed to sell the land when he was to square off certain debts. In a given case, where land is sought to be disposed of for squaring off the debts, then the land owner would be possessed of less land and money obtained from the sale transaction would not be used for cultivation etc. If such ground could persuade the Deputy Collector for granting permission, than the other ground that the land owner wanted to develop other lands and as he was in need of money he was to transfer

the land, then the second application was standing on better and sound footing. On one side, the Deputy Collector says that the land owner can sell the land to pay the debts, but at the same time, he refuses the application though submission before him was that money was needed to develop the land.

4. Rule-25C[f] of the Bombay Tenancy & Agricultural Land Rules, 1956 provides that if the land owner proposes to sell the land on the ground that he is in need of contracting his holding either for adequate finance or for intensive cultivation, then such application would be maintainable under Section 43 of the Bombay Tenancy & Agricultural Lands Act. The Deputy Collector, in the opinion of this Court, did not properly appreciate the legal provisions and rejected the application on flimsy ground. The Revenue Tribunal was absolutely justified in granting revision filed by the respondent no.2

5. I find no reason to interfere. The writ application is dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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